

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6567 of 1984

with

SPECIAL CIVIL APPLICATION No 1549 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRIYVADAN B PATHAK

Versus

DISTRICT PANCHAYAT, SURENDRANAGAR & ORS.

Appearance:

1. Special Civil Application No. 6567 of 1984
MR PV HATHI for Petitioner
MS MAMTA VYAS for Respondents No. 1, 2
MR HL JANI for Respondents No. 3, 4
2. Special Civil Application No. 1549 of 1986
MR PR JOSHI for Petitioner
MS MAMTA VYAS for Respondents No. 1, 2
MR HL JANI for Respondents No.3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/04/97

ORAL JUDGEMENT

1. As both these Special Civil Applications have been filed by one and the same petitioner in respect of same cause of action, the same are being disposed of by this common order.

2. The facts of the case are that the petitioner was temporarily appointed as driller in the Irrigation Division of the respondent Panchayat on 22nd May, 1973. The post of driller was not sanctioned post, but later on under the order of the Development Commissioner dated 19th December, 1975 approval was accorded to create on temporary basis the post of driller. Under the order of the Government dated 4th February, 1980, the approval has also been accorded to regularise the post of driller which was irregularly created for the period from 21st January, 1973 to 18th December, 1975 by the District Development Officer. Vide notification dated 20th December, 1984, the services of the petitioner were terminated with effect from 19th January, 1985 on the ground that no work of drilling was available. That order of termination has been challenged by the petitioner by filing Special Civil Application No.6567/84 before this Court. This Court on 1-1-1985 issued notice returnable on 15th January, 1985. The writ petition was admitted on 22nd January, 1986. Earlier to it, on 18th January, 1985, this Court made the order:

Adjourned to 23rd January, 1985 at the request of Mr. Shukla. In the meantime, status-quo as to the petitioner's present position should be maintained subject to the clarification that beyond 19th January, 1985, the petitioner will be treated to be on leave without pay till further orders.

3. So from 19th January, 1985, the petitioner is not in service. On 3rd April, 1985, this Court has made the order:

Subject to the order of this Court and without prejudice to his rights and contentions, the petitioner should hand over the records with him to the Panchayat. At the same time, the Government, in the facts and circumstances of the case, is required to sanction the post of Mechanical Supervisor for the Surendranagar Zilla Panchayat as suggested and requested by the Zilla Panchayat.

4. The Special Civil Application No.1549/86 has been filed by the petitioner against the same order of termination of his services and other prayer has been made, therein, that the earlier order of this Court dated 3-4-1985 made in Sp. C.A. No.6567/84 has not been complied with. This petition was admitted by this Court on 11-1-1991. The order made by this Court, reads as under:

Learned counsel Mr. H.L. Patel states that the petition involving identical questions, being Special Civil Application No.6567 of 1984, reference to which has been made in Para No.11 of the petition, has already been admitted by this Court. Relying upon the aforesaid statement, the following order is passed:

Rule.

To be heard with Special Civil Application
No.6567 of 1984.

5. The learned counsel for the petitioner contended that the termination of the services of the petitioner is wholly arbitrary and unjustified. The work was available for him and he should have been taken in another work i.e. on the post of Automobile Supervisor. It has next been contended that when this Court has ordered for sanction of the post of Mechanical Supervisor in the District Jilla Panchayat, the Government should have complied with that order, but it has not been done.

6. On the other hand, the counsel for the respondent contended that the petitioner has no right whatsoever to continue on the post. He was appointed on the post of driller and when the work of drilling has come to an end, the respondents were within their competence to terminate his services. It has next been contended that the post of driller was temporarily created and the petitioner was temporarily appointed, and when the work has come to an end, the only order could have been passed to terminate his services which has been made and no exception can be taken to the said order whatsoever.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. The petitioner was given the appointment under the office order dated 22nd May, 1973. The appointment of the petitioner was made purely on temporary basis

subject to the conditions, (i) that he shall be liable to be discharged from services without notice, if his services are not required, (ii) his temporary appointment is made subject to the approval of the Gujarat Panchayat Services Selection Board and he shall be discharged from service on not getting the approval of the said Board, (iii) on availability of the selected candidate from the Board his services were to be discharged. The responsibility of passing through the process of selection lies upon the petitioner. If the petitioner fails to do so or is not selected by the Board and the candidate selected by the Board is made available then in this case, his appointment is upto the period till the candidate selected is made available.

9. From the order dated 27th August, 1985 of the District Development Officer of the Surendranagar District Panchayat, it is clear that there was no full-time work available in the District Panchayat for the petitioner. However, the petitioner's services were utilised on the post of Automobile Supervisor when the work of drilling was not available. The temporary post of driller was approved under the order dated 18th December, 1975, subject to the condition that the post shall be required to be filled up in accordance with the prescribed recruitment rules.

10. Then comes the order of the Government dated 4th February, 1980, and it is a case where the petitioner has completely misread this order. The post was not created and still the petitioner has been given the appointment and this appointment continued till 18th December, 1975. The approval for the temporary creation of the post of driller was made on 19th December, 1975. To regularise the period earlier to 19th December, 1975, this post-facto sanction has been given by the Government, but it is not a case where the petitioner's appointment has been regularised nor it could have been done. The petitioner was not appointed on the post of driller after selection. The initial appointment of the petitioner under the order dated 22nd May, 1973 was nothing but a back-door entry. Though it was a temporary appointment, but it has been made though the post was not available. This fact goes to show that somebody was there in the District Panchayat to favour the petitioner. The very induction of the petitioner was as a result of favouritism and nepotism. The petitioner was appointed purely on temporary basis and one of the conditions of the appointment was that he shall be liable to be discharged from services without notice if his services are not required. It is not the case of the petitioner

that thereafter he has been selected for this post by the Board or his case was ever sent for regularisation or selection by the respondents to the Board. The post of driller was temporarily sanctioned. The facts are not in dispute that the Executive Committee of the District Panchayat in its meeting held on 23rd November, 1984, decided to dispose of the Boring Rig by public auction, and later on, the Boring Rig was disposed of. So the work was not available. The District Panchayat under its letter dated 20th December, 1985 recommended to the Government for creation of the post of Mechanical Supervisor. That decision was also a decision to favour the petitioner. The petitioner was illegally inducted in the services and when the work was not available for him, as per the terms of his appointment order on which there is no dispute, his services has to be terminated, but somebody was there to support him and this letter has been written to the Government. However, it is a fact that the Government has not accepted the recommendation and the post of Mechanical Supervisor was not created.

11. Much emphasis has been put by the learned counsel for the petitioner on the order of this Court dated 3rd April, 1985 passed in S.C.A. No.6507/84. This Court has made a request to the Government to sanction the post of Mechanical Supervisor for the Surendranagar Jilla Panchayat as suggested and requested by the Jilla Panchayat. So it is incorrect to say on the part of the petitioner that this Court has given any direction for the creation of the post. This Court otherwise also sitting under Article 226 of the Constitution could not have given any direction for creation of any post. The creation or abolition of the post is a prerogative of executive, and reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of State of Haryana vs. Piara Singh reported in AIR 1992 SC 2130. Moreover, the post of driller was required to be filled in by selection through the agency of the Selection Board, and as such, merely because the petitioner has been inducted in service illegally there could not be any justification for creation of any post for his retention in the service. The initial appointment of the petitioner itself was in contravention of the Articles 14 and 16 of the Constitution of India. However, if the post is created of Mechanical Supervisor, the question does arise whether the petitioner could have been taken on that post, and the reply to the same is negative. That post has to be filled in in accordance with the recruitment rules and if there are no recruitment rules then in accordance with the provisions as contained in Articles 14 and 16 of the Constitution,

all the eligible candidates for the post have a fundamental right for consideration for public employment. It is a settled law that having made the rules of recruitment to various services under the State or to a class of posts under the State or District Panchayat etc. the State or District Panchayat is bound to follow the same and to have the selection of the candidates made as per the recruitment rules and the appointments shall be made accordingly. From the very order of the appointment of the petitioner, it is clear that the appointment has to be made after selection from the Board on the post of driller. Similarly, from the order of the approval of the post dated 19th December, 1975, it is also clear that the post was required to be filled in as per the recruitment rules. The appointment of the petitioner in the present case was not in accordance with the recruitment rules or even in accordance with the provisions of Articles 14 and 16 of the Constitution of India. The petitioner was appointed as a Rig driller and that work has come to an end. The project in which the petitioner was inducted had come to an end and therefore, he has necessarily been terminated for want of work. In view of these facts, the action taken by the respondent-District Panchayat to terminate the services of the petitioner cannot be said to be arbitrary or illegal or contrary to any of the provisions of the recruitment rules of the Constitution. This Court sitting under Article 226 of the Constitution cannot give any direction to the District Panchayat or the Government to reengage the petitioner in any other work or appoint him against the existing vacancies in other category. Similarly, this Court cannot give any direction to the Government to sanction any other post in the District Panchayat for the absorption of the petitioner. If it is done, then the judicial process would become another mode of recruitment dehors the rules.

12. Much emphasis has been laid down by the counsel for the petitioner that the post of Automobile Supervisor is available, and as such, the petitioner is entitled to continue in the service, but I do not find any substance in this contention. Even if there is some vacancy of Automobile Supervisor it is required to be filled in, in accordance with the rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek recruitment along with all the eligible candidates. The temporary appointment which was dehors of the rules cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. Reference may

have to the decision of the Apex Court in the case of State of H.P. vs. Suresh Kumar Verma and Anr. reported in 1996(7) SCC 562. The termination of the services of the petitioner in the present case by the District Panchayat is perfectly legal and justified and no exception can be taken to the same. None of the legal and fundamental rights of the petitioner are being infringed, and as such, no relief can be granted to the petitioner. The appointment order of the petitioner was a conditional order and there was a specific condition that in case of non-availability of the work in the District Panchayat, he shall be discharged from the services without any notice. The petitioner is bound by this term of the appointment order as he has accepted this appointment subject to the aforesaid condition and when admittedly the work of drilling was not available in the District Panchayat, the post has been abolished and the petitioner's services has to be discharged to which no exception can be taken by him.

13. The Special Civil Application No.1549/86 is nothing but an act on the part of the petitioner to abuse the process of the Court. The learned counsel for the petitioner contended that this petition has been admitted by the Division Bench by passing a speaking order. The order of the Division Bench is already reproduced above. It is not a case where this Court has considered whether this matter is maintainable or not maintainable. It is a settled law that in respect of the same cause of action, the petitioner cannot have two parallel remedies. In the present case, what the petitioner did, to avail of the same remedy before this Court for the same cause of action, and certainly it is an abuse of the process of this Court.

14. In the result, both these Special Civil Applications fail and the same are dismissed. Rule discharged. Interim relief granted by this Court stands vacated.

zgs/-